U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

March 24, 2017

BY ECF & E-MAIL

Honorable Richard J. Sullivan
United States District Judge
Southern District of New York
United States Courthouse
40 Foley Square
New York, New York 10007

Re: United States v. Parrello, et al.,
S1 16 Cr. 522 (RJS)

Dear Judge Sullivan:

The Government respectfully submits this letter in response to the Court's order of March 17, 2017 (the "March 17 Order") regarding a letter filed by Jerry Capeci (the "Capeci Letter"). In the Order, the Court directed the Government to address two issues: (1) whether Capeci should be allowed to intervene in the above-captioned criminal case, and (2) the need to seal the Government's letter of March 8, 2017 (the "Letter").

With respect to the first issue, the Government agrees that, under Second Circuit precedent, Capeci has a right to intervene in the pending criminal case to assert a First Amendment claim. While "[t]he Federal Rules of Criminal Procedure make no reference to a motion to intervene in a criminal case," the Second Circuit has explained that "a motion to intervene to assert the public's First Amendment right of access to criminal proceedings is proper." *United States* v. *Aref*, 533 F.3d 72, 81 (2d Cir. 2008); *see also In re N.Y. Times Co.*, 828 F.2d 110, 113 (2d Cir. 1987).

With respect to the second issue, the Court has asked the Government to address—in this letter, which will be publicly docketed—the need to maintain the disclosure Letter under seal. To explain the need for sealing, however, requires a discussion of the very matters that the Government submits should remain sealed. As such, the Government respectfully submits that such matters cannot be addressed in this publicly filed letter. Rather, the Government will address the need for sealing in a sealed response (which will also be filed today) that discusses, among other things, the need to seal that very response.

Respectfully submitted,

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cc: all counsel (by ECF)
Jerry Capeci (by email)